

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MELISSA S. DICK,

Petitioner,

v.

No Named Respondent,

Respondent.

NO: 2:22-CV-0079-TOR

ORDER SUMMARILY DISMISSING
HABEAS PETITION

Petitioner, a prisoner at the Lincoln County Jail, filed a blank Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. ECF No. 1. The \$5.00 filing fee has not been paid and Petitioner seeks to proceed in forma pauperis. ECF No. 2.

PROPER RESPONDENT

The glaring defect in the Petition is that it is blank and unsigned. The Petition fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner.

1 *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d
2 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is
3 generally the warden of the institution where the petitioner is incarcerated. *See Ortiz-*
4 *Sandoval v. Gomez*, 81 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent
5 deprives federal courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360.

6 Petitioner has not established that she exhausted her state remedies before
7 filing the Petition. Before a federal court may grant habeas relief to a state prisoner,
8 the prisoner must exhaust the state court remedies available to her. 28 U.S.C. §
9 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
10 a prisoner give the state courts an opportunity to act on his claims before she presents
11 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
12 petitioner has not exhausted a claim for relief so long as the petitioner has a right
13 under state law to raise the claim by available procedure. *See id.*; 28 U.S.C. §
14 2254(c).

15 To meet the exhaustion requirement, the petitioner must have “fairly
16 present[ed] his claim in each appropriate state court (including a state supreme court
17 with powers of discretionary review), thereby alerting that court to the federal nature
18 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,
19 365–66 (1995). A petitioner fairly presents a claim to the state court by describing
20 the factual or legal bases for that claim and by alerting the state court “to the fact


1 that the . . . [petitioner is] asserting claims under the United States Constitution.”
2 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th
3 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim
4 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

5 Because it plainly appears from the Petition that Petitioner is not entitled to
6 relief in this Court, **IT IS ORDERED** the petition, ECF No. 1, is **DISMISSED**
7 pursuant to Rule 4, Rules Governing Section 2254 Cases in the United States District
8 Courts.

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
10 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
11 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
12 taken in good faith, and there is no basis upon which to issue a certificate of
13 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
14 appealability is therefore **DENIED**.

15 DATED April 27, 2022.




THOMAS O. RICE
United States District Judge